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Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY
LITIGATION

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Master Docket No.: 4:20-cv-03056-DMR

**SUPPLEMENTAL JOINT DECLARATION
OF CHRISTOPHER J. CORMIER, SHAWN
M. KENNEDY, AND RACHEL GEMAN IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND
PLAINTIFF SERVICE AWARDS, AND IN
RESPONSE TO COURT'S ORDER (DKT.
177)**

1 We, CHRISTOPHER J. CORMIER, RACHEL GEMAN, and SHAWN M. KENNEDY,
2 hereby declare as follows:

3 1. Christopher J. Cormier is a member in good standing of the District of Columbia
4 and Colorado State Bars and a partner in the law firm of Burns Charest LLP (“Burns Charest”).
5 Shawn Kennedy is a member in good standing of the California State Bar and a partner in the law
6 firm of Herrera Kennedy LLP (“Herrera Kennedy”). Rachel Geman is a member in good standing
7 of the New York State Bar and a partner in the law firm of Lief, Cabraser, Heimann & Bernstein,
8 LLP (“Lief Cabraser”). Together, Burns Charest, Herrera Kennedy, and Lief Cabraser were
9 appointed Co-Lead Interim Class Counsel on July 29, 2020 (Dkt. 57) and Co-Lead Class Counsel
10 (“Class Counsel”) on November 19, 2021 (Dkt. 153).

11 2. We submit this Supplemental Declaration jointly in support of Plaintiffs’ Motion
12 for Attorneys’ Fees, Reimbursement of Expenses, and Plaintiff Service Awards (Dkt. 157) and in
13 response to the Court’s request for supplemental information following the Final Approval
14 Hearing on May 12, 2022 (*see* Dkts. 177, 180).

15 3. In this Supplemental Declaration, Class Counsel provide “supplemental evidence
16 supporting the request for an award of attorneys’ fees, including specifically addressing how the
17 three firms appointed Class Counsel organized and carried out their division of labor to ensure
18 that there was no duplication of work and/or to minimize such duplication.” Dkt. 180 at 1. Each
19 firm provides its own declaration for the firm-specific questions posed by the Court, namely,
20 “support for the hourly rates requested as follows: Herrera Kennedy, all timekeepers; Lief
21 Cabraser, Danna Elmasry; and Burns Charest, all timekeepers other than Chris Cormier and
22 Warren Burns.” These are attached hereto as exhibits. *See* Section III below.

23 4. Except as otherwise noted, we have personal knowledge of the statements
24 contained in this declaration and, if called to testify, could and would testify competently to the
25 truth of the matters stated herein.
26
27
28

I. CLASS COUNSEL HAVE IMPLEMENTED ESTABLISHED PROCEDURES TO LITIGATE THE CASE EFFECTIVELY AND EFFICIENTLY ON THE CLASS'S BEHALF.

5. In appointing Burns Charest, Herrera Kennedy, and Lieff Cabraser as Class Counsel, the Court granted the firms authority over various matters on behalf of all plaintiffs and the class, including “coordinating and managing all work to ensure the efficient and effective prosecution of the Consolidated Action on behalf of the Plaintiffs and the proposed Classes.” *See* Dkt. 57 (“Pretrial Order”) at ¶ 14.

6. Class Counsel have managed and organized this litigation by implementing practices and procedures—informed in large part by our collective experience successfully serving as lead counsel in other complex class actions—that have enabled the effective and efficient prosecution of the case on the class’ behalf.

7. First, Class Counsel utilized a lean core leadership structure, comprised of one senior lawyer from each firm, to organize and manage the duties the Court entrusted to Class Counsel. Second, Class Counsel regularly communicated with each other to promote the orderly and efficient management of the case and to prevent duplicative work. Third, Class Counsel assigned specific tasks to specific Class Counsel firms in a manner that ensured the tasks were performed properly and efficiently while reasonably utilizing Class Counsel’s collective experience, insight, and input. Fourth, Class Counsel involved other plaintiffs’ counsel for specific assignments as appropriate and in a manner that ensured those tasks were performed properly and efficiently. Fifth, Class Counsel implemented and adhered to reporting protocols that have helped ensure that all counsel’s time and expenses were appropriate and instituted and maintained a litigation fund that has helped ensure sufficient funding for the prosecution of the case on the class’s behalf. Each of these practices is discussed in greater detail below.

A. The Core Team, Consisting of One Senior Lawyer From Each Class Counsel Firm, Managed All Aspects of the Case.

8. Since the inception of this matter, and months before the first complaint was filed, one senior lawyer from each Class Counsel firm has served as that firm’s point person to manage

1 their own firm's staffing and workload as well as to more broadly run the case in coordination
2 with their counterparts on the class' behalf.

3 9. This core team was formed to prosecute the case in an efficient and orderly
4 manner within and among the eventual Court-appointed Class Counsel firms and, if necessary,
5 any additional class counsel firms that filed complaints and became involved in the litigation.

6 10. The core leadership team in this case is comprised of Shawn M. Kennedy of
7 Herrera Kennedy LLP; Rachel Geman of Lieff Cabraser Heimann & Bernstein, LLP; and
8 Christopher J. Cormier of Burns Charest LLP.

9 **B. Class Counsel Regularly Communicated to Ensure All Specific Tasks and**
10 **Broader Strategic Goals Were Handled and Implemented Properly.**

11 11. A key part of Class Counsel's approach to case management has been regular
12 communication. Experience has taught us that frequent and purposeful communication is
13 necessary to ensure that all deadlines and milestone are met, that all assignments are performed
14 well and on time, and that all important strategic matters are thoroughly considered and ultimately
15 decided.

16 12. With this tenet in mind, the core Class Counsel team communicated regularly and
17 frequently since day one through Zoom meetings, telephone calls, and email exchanges. These
18 communications, through one form or another, typically have occurred once per week, although
19 during particularly busy times, they occurred multiple times per week.

20 13. As the needs of the litigation shifted and expanded in scope, the core team also
21 often convened meetings or calls with a broader group of attorneys and staff from the Class
22 Counsel firms as appropriate to discuss various strategy and case management issues, including
23 the allocation of, and progress on, various litigation and settlement-related tasks. Class Counsel
24 ensured that strategy discussions were limited to senior attorneys and personnel responsible for
25 handling the tasks being discussed. Sometimes having additional attorneys on these calls ensured
26 that the relevant strategies, issues, and assignments could be discussed clearly and efficiently, and
27 it offered the opportunity for members of the broader leadership team to ask questions and
28 provide insight on a given issue that may not otherwise have been raised or considered.

1 Participation by the broader group also greatly minimized if not eliminated the amount of time
 2 and energy that otherwise would have been spent summarizing call content and repeating
 3 instructions to individuals at each firm.

4 14. Accordingly, such Class Counsel calls and other communications benefitted the
 5 class. *See MacDonald v. Ford Motor Co.*, No. 13-cv-02988-JST, 2016 WL 3055643, at *4 (N.D.
 6 Cal. May 31, 2016) (recognizing that “some number of intra-office conferences are not only to be
 7 expected, but will often result in a savings of attorney time by ensuring that all attorneys on a
 8 team are kept apprised of important information about the case as it becomes available”); *PSM*
 9 *Holding Corp. v. Nat’l Farm Fin. Corp.*, 743 F. Supp. 2d 1136, 1157 (C.D. Cal. 2010) (“Multiple
 10 attorneys may be essential for planning strategy, eliciting testimony or evaluating facts or law.”).

11 C. **Each Class Counsel Firm Spearheaded Specific Assignments While**
 12 **Contributing to the Overall Management and Direction of the Case.**

13 15. Class Counsel predominantly allocated among their firms the various tasks that
 14 arose during the case’s lifespan in a sensible and non-duplicative manner. Under this allocation
 15 method, one attorney at one Class Counsel firm was assigned to take the lead on a specific task,
 16 while in the case of larger projects warranting more time and attention, multiple attorneys would
 17 take lead roles, dividing the work among them in a reasonable way. Illustrative examples of Class
 18 Counsel’s approach are provided in Section III below.

19 16. No more than one attorney or firm assigned to complete the same task (though
 20 obviously counsel collaborated and assisted each other when needed in analyzing important legal
 21 issues where there the right answer or strategy presented no clear answer). Such duplicative work
 22 would not have benefitted either the class or its counsel. Such work would take money out of the
 23 pockets of the class, and force counsel to spend unnecessary time and effort performing redundant
 24 and needless work when their time could have been better spend handling other tasks that needed
 25 to get done.

26 17. However, once a lead attorney completed and circulated their assigned work
 27 product—particularly when the work product involved significant or important litigation tasks,
 28 such as briefs to be filed with the Court, written discovery requests or responses, or a settlement

1 demand with detailed proposed terms—the broader Class Counsel team generally reviewed and
 2 provided input on the work product before it was finalized. The reason for this is explained by the
 3 desired result: to present the best product possible on behalf of the class by utilizing the diverse
 4 talents and skill sets of the larger team.

5 18. Broader team involvement of this nature has thus benefitted the class. As courts in
 6 the Ninth Circuit have recognized, “multiple attorneys may be essential for planning strategy,
 7 eliciting testimony or evaluating facts or law.” *PSM Holding Corp.*, 743 F. Supp. 2d at 1157. And
 8 “participation of more than one attorney does not necessarily constitute an unnecessary
 9 duplication of effort.” *Kim v. Fujikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989) (finding
 10 participation by more than one attorney a “reasonable necessity, given the complexity of legal
 11 issues and the breadth of factual evidence involved”). *Accord Ridgeway v. Wal-Mart Stores Inc.*,
 12 269 F. Supp. 3d 975, 990-91 (N.D. Cal. 2017) (recognizing that some duplication of effort “is
 13 inherent in the process of litigating over time”) (quoting *Moreno v. City of Sacramento*, 534 F.3d
 14 1106, 1112 (9th Cir. 2008)). This case was no exception given the novelty and complexity of the
 15 factual and legal issues at hand and given the sophisticated, highly regarded law firms that
 16 aggressively and vigorously have represented Defendant’s interests here.

17 **D. Class Counsel Delegated and Oversaw Assignments to Additional Class**
 18 **Counsel Firms as Appropriate.**

19 19. Mindful of their obligation to litigate the case in an efficient and cost-effective
 20 manner while appreciative of their unique knowledge of the relevant factual and legal issues,
 21 Class Counsel handled the substantial majority of the work themselves.

22 20. At the same time, Class Counsel chose to involve other plaintiffs’ counsel in
 23 specific tasks when it made sense to do so (with sufficient oversight) to ensure the assignments
 24 were performed in a timely, professional, and efficient manner.

25 21. For example, Class Counsel tasked other plaintiffs’ counsel firms with liaising
 26 with their respective clients, *i.e.*, the named Plaintiffs, on defensive discovery, including working
 27 with the ESI vendor to identify and take mirror image copies of all relevant ESI in their
 28 possession, custody or control, and providing substantive responses when appropriate to

1 Defendants' discovery requests. They also tasked these firms with reviewing and discussing the
 2 terms of the proposed settlement agreement with their respective named Plaintiff clients and,
 3 ultimately, receiving approval and securing corresponding declarations from those clients.

4 22. Class Counsel also assigned certain Plaintiffs Steering Committee ("PSC") firms
 5 specific tasks concerning researching and analyzing the relevant caselaw and providing
 6 recommendations on potential plans of allocation of the net settlement fund among class
 7 members. Class Counsel considered these firms' non-duplicative work in making their ultimate
 8 decision on a proposed plan of allocation.

9 **E. Class Counsel Oversaw and Maintained Time and Expense Records and**
 10 **Provided Necessary Funding of Litigation Expenses for the Class's Benefit.**

11 23. Finally, Class Counsel have implemented and followed systems to ensure that
 12 counsel appropriately billed the class for their time and expenses and that counsel appropriately
 13 funded the case by contributing to a joint litigation fund so that the class could avail itself of the
 14 third-party administrator and consultant services needed to properly represent the class' interests.

15 24. Soon after the Court appointed leadership, Burns Charest, on behalf of Class
 16 Counsel, sent a letter to all plaintiffs' counsel setting forth a time and expense reporting protocol
 17 that everyone was required to follow. This letter detailed the reporting process and requirements
 18 and contained templates that detailed the categories of information the firms had to track and
 19 report on a monthly basis. Throughout the case, Class Counsel have overseen this reporting to
 20 ensure that counsels' time was reported timely and appropriately and that their reported expenses
 21 reflected properly incurred costs. (Class Counsel are prepared to submit to the Court *in camera*
 22 their detailed time and expense reports if the Court so desires.)

23 25. In addition, Lieff Cabraser, on behalf of Class Counsel, has maintained and
 24 periodically assessed and collected contributions (solely from Class Counsel) to the litigation
 25 fund. This fund was used to pay common case-related expenses like ESI vendors, expert
 26 consultants, and settlement administrators. Through the initiation and management of the
 27 litigation fund, Class Counsel have ensured that the class has had sufficient cash on hand to pay
 28 the expenses commonly needed in this type of case to properly represent their interests.

26. In sum, Class Counsel have managed this novel and important class action and organized the corresponding legal work with the goals of delivering significant benefits to the class while ensuring that no unnecessary duplication of work or wasted effort occurred.

II. CLASS COUNSEL HAVE EFFICIENTLY COORDINATED AND HANDLED WORK ON THE CLASS'S BEHALF

27. As explained in Section I.C above, in managing this litigation, Class Counsel divided and assigned specific tasks to ensure that work was performed in an efficient and appropriate manner.

28. **Factual Investigation:** This litigation was not precipitated by any governmental investigation or whistleblower lawsuit, in contrast to many other meritorious and high-profile class actions. Rather, this case and the ensuing settlement resulted from the hard and extensive work of Class Counsel. This case was developed and investigated in the first instance by Herrera Kennedy. Specifically, Shawn Kennedy identified and spearheaded the investigation into Plaid's practices, drawing upon his particular knowledge and experience as a former executive in the financial technology industry. Herrera Kennedy attorneys broadly handled the initial factual investigative efforts, including the identification and review of numerous videos, message board posts, websites, submissions to government regulators, podcasts, marketing materials, "hacker threads," articles, and other sources. Herrera Kennedy's extensive efforts also involved delving into the history and evolution of Plaid's business. Once Burns Charest and Lieff Cabraser became involved in the months before the filing of the initial complaint, the contours of the factual investigation broadened in scope to include, for example, analysis of relevant data and related forensics and research and analysis of additional potential legal claims focusing on certain privacy laws and the regulatory backdrop for them. The work performed in this extensive pre-filing investigation phase was collaborative but not duplicative.

29. **Complaints:** Herrera Kennedy drafted much of the factual portions of the initial complaint (which were also in the consolidated amended complaint). Burns Charest and Lieff Cabraser drafted much of those complaints' sections focusing on the legal claims, causes of action, and class-related allegations. Lieff Cabraser largely oversaw the process for selecting class

1 representatives in the consolidated amended complaint and finalizing that pleading. As with Class
2 Counsel's pre-filing investigation efforts, their work in drafting the initial and consolidated
3 amended complaints was collaborative but not duplicative.

4 30. **Motion Practice:** As an example of the efficient work allocation approach
5 discussed above, the firms often focused throughout different projects, including motions and
6 briefs filed with and argued before the Court, on substantive topics. Lieff Cabraser was most
7 focused at the complaint stage and motion to dismiss briefing stages on privacy and dignitary
8 torts, other common-law claims, and on the California Anti-Phishing Act Claim. Thus, it was
9 efficient for Lieff Cabraser to handle both drafting, briefing, and oral argument about those
10 claims, and it did so. Herrera Kennedy focused on the other statutory claims, and the firm
11 therefore took the lead in both briefing and presenting oral argument on those claims. Burns
12 Charest also participated in drafting and briefing of deceit-related claims, and given its familiarity
13 with the issues addressed in the complaints and motion to dismiss briefing, Mr. Cormier prepared
14 for and led Plaintiffs' moot argument that helped prepare Ms. Geman and Mr. Kennedy for their
15 subsequent argument before the Court on Defendant's motion to dismiss. And while assignments
16 on the larger briefs were allocated among the different firms in a sensible and non-duplicative
17 manner, smaller and more discrete research and writing assignments were handled by just one
18 firm as a matter of course. These assignments were driven by a singular purpose of delivering
19 superior work product that benefited from a diverse range of talents efficiently. There was no
20 divvying of assignments among multiple firms for its own sake.

21 31. **Organizing Plaintiffs' Counsel:** As other complaints were filed, the core lead
22 counsel team spoke with and organized the other plaintiffs' counsel into a leadership structure
23 that Class Counsel proposed and that the Court ultimately endorsed. The work Class Counsel
24 allocated to other plaintiffs' counsel, including the PSC, was addressed above.

25 32. **Discovery:** In seeking discovery from Plaid and third parties, each of the three
26 Class Counsel firms focused on discrete areas of discovery, while at the same time ensuring that
27 important goals, topics and follow-up items did not fall through the cracks. For example, one firm
28 drafted each set of discovery requests (Herrera Kennedy as to the document requests and

interrogatories, and Burns Charest on the requests for admission), one firm (Lieff Cabraser) drafted third party subpoenas, and one firm (Burns Charest) handled Plaintiffs' responses to Plaid's discovery requests. Relatedly, Burns Charest managed Plaintiffs' defensive discovery program, including engaging and working with Plaintiffs' third-party ESI vendor, scheduling and managing the ESI vendor's retention of the named Plaintiffs' relevant ESI, working with the named Plaintiffs and their respective counsel on drafting Plaintiffs' objections and responses to Defendant's document production requests and interrogatories, and leading related meet and confers with Defendant. For each set of written discovery requests or responses, a designated attorney from an assigned firm took the lead in drafting and circulating work product to others on the team for feedback. And that assigned attorney handled the subsequent meet-and-confers and negotiations for the respective set of discovery requests or responses (and reported back to the broader Class Counsel team and receiving direction and guidance as appropriate). In addition, a small group of attorneys from the Class Counsel firms conducted a high-level review of Plaid's initial document production, which was used both to further guide Plaintiffs' discovery strategy and to further inform their strategy on settlement.

33. **Mediation:** While all three Class Counsel firms (and particularly the core leadership team members) were involved throughout the mediation process and participated in the mediations before the Hon. Jay Gandhi (ret.), there was considerable yet non-duplicative preparatory work that occurred before, between, and after each mediation session. For example, Lieff Cabraser (Ms. Geman) was the point person for direct one-on-one communications with the mediator, and handled the first draft of the mediators' eyes only brief. Herrera Kennedy (Mr. Kennedy) handled the first draft of the exchanged brief. Burns Charest (Mr. Cormier) handled the research, analysis and recommendations on (a) insurance coverage available from Plaid's primary and excess insurers to help fund a settlement, and (b) Plaid's ability to self-fund a settlement, in coordination with analysis provided by a retained financial consultant who reviewed Plaid's financial statements and other available data. Burns Charest (Mr. Cormier) also worked with the named Plaintiffs and their counsel to provide certain informal discovery requested of them by Plaid as part of the mediation process.

1 34. **Settlement:** As a further example of the efficient work division, the Class
2 Counsel firms divided work in a sensible, non-duplicative way on the various settlement-related
3 tasks that arose once the parties had agreed in principle to settle the case following the final
4 mediation. For example, Burns Charest handled selecting and retaining the escrow agent and
5 negotiating the corresponding agreement, working with the named Plaintiffs and their individual
6 counsel to answer questions that arose and to obtain client approval and corresponding
7 declarations, and participating in the drafting of the settlement agreement, corresponding approval
8 papers, and allocation discussions. Lieff Cabraser worked more closely with the claims
9 administrator and handled first drafts of multiple settlement documents, such as the injunctive
10 relief and notice documents. Lieff Cabraser also developed the framework for, and participated
11 in, the allocation discussions. Herrera Kennedy was responsible for creating the draft of the
12 motion for preliminary settlement approval, reviewing and revising discrete portions of the
13 settlement documents, honing the settlement class definition in light of technical information
14 obtained from Plaid, and handling myriad issues relating to the technical capacity for
15 identification of class members. After preliminary approval (the argument of which, as in other
16 oral arguments in the case, was handled by at most two firms), the firms all addressed class
17 member inquiries in a non-duplicative and organized fashion. Since commencement of the notice
18 program, the three Class Counsel firms have also worked to ensure class member inquiries that
19 were made directly to counsel received timely and consistent responses. In particular, the firms
20 kept a central database of inquiries to track and assign responsibility for individual inquiries and
21 ensure no duplication. Lieff Cabraser handled first drafts of final approval briefing and addressing
22 objectors; Herrera Kennedy handled the first draft of fee briefing. All three Class Counsel firms
23 worked to design and oversee execution of the initial notice campaign, and Burns Charest
24 prompted the second reminder notice campaign.

25 35. **Administration:** Throughout the course of the litigation, due primarily to the
26 location of its primary office in San Francisco, Lieff Cabraser assumed a form of liaison counsel
27 role among Class Counsel, providing procedural and administrative support on most major case
28 filings—including, for example, the consolidated amended complaint and Plaintiffs’ settlement-

1 related motions. As noted above, Burns Charest oversaw the reporting and collection of all firms'
2 time and litigation expenses, and Lieff Cabraser maintained the cost fund.

3 **III. SUPPORT FOR CLASS COUNSEL'S HOURLY RATES**

4 36. In response to the Court's request for additional evidentiary support for the hourly
5 rates of several timekeepers from Class Counsel's firms, Class Counsel firm submits the
6 following declarations.

7 37. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of
8 Christopher J. Cormier.

9 38. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of
10 Shawn M. Kennedy.

11 39. Attached hereto as **Exhibit 3** is a true and correct copy of the Declaration of
12 Rachel Geman.

13 **IV. LODESTAR MULTIPLIER**

14 40. At the original hourly rates requested in Class Counsel's moving papers, Class
15 Counsel's request for the benchmark 25% of the Settlement represented a 3.29 multiplier. (Dkt.
16 157, at page 8 of 27.) After recalculating Herrera Kennedy's lodestar contribution as discussed in
17 the accompanying Declaration of Shawn M. Kennedy—solely for the purpose of demonstrating a
18 lodestar crosscheck—to reduce Ms. Seidl's time to \$675 per hour and Mr. Hembd's to \$625 per
19 hour, the lodestar decreases by a total of \$66,355, resulting in a multiplier of 3.35. And, for
20 illustration, subtracting both that total and the lodestar for Ms. Elmasry from Lieff Cabraser as
21 discussed in the accompanying Declaration of Rachel Geman, the multiplier would increase
22 only to 3.36. In either event, the multiplier would still be well within the acceptable range. *See*
23 Dkt. 157 at 16 (citing cases with much higher lodestar multipliers).

24 * * *

25 I declare under penalty of perjury that the foregoing is true and correct as to all matters of
26 which I have personal knowledge. Executed this 19th day of May, 2022, in New York, New
27 York.

28 /s/ Rachel Geman
Rachel Geman

1 I declare under penalty of perjury that the foregoing is true and correct as to all matters of
2 which I have personal knowledge. Executed this 19th day of May, 2022, in Washington, D.C.

3 /s/ Christopher J. Cormier

4 Christopher J. Cormier

5 I declare under penalty of perjury that the foregoing is true and correct as to all matters of
6 which I have personal knowledge. Executed this 19th day of May, 2022, in Rancho Santa
7 Margarita, California.

8 /s/ Shawn M. Kennedy

9 Shawn M. Kennedy
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